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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
GTE CORPORATION,)	
)	
Transferor,)	
)	CC Docket No. 98-184
and)	
)	
BELL ATLANTIC CORPORATION,)	
)	
Transferee,)	
)	
For Consent to Transfer of Control.)	

**BELL ATLANTIC AND GTE OPPOSITION TO COMMENTS
ON PROPOSED PROTECTIVE ORDER**

Only two parties, GST Telecom and US Cellular, filed comments on the proposed protective order submitted by Bell Atlantic and GTE in connection with their merger proceeding before the Commission. Both parties want to eliminate provisions that the Commission specifically included in its protective orders for other telecommunications merger proceedings. Neither party offers a sound basis for eliminating these provisions for the Bell Atlantic/GTE merger.

GST wants the Commission to remove the provision that limits access to confidential documents to in-house counsel that "are not involved in competitive decision-making, i.e., counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's business decisions

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made in light of similar or corresponding information about a competitor.” GST Comments at 2. There is no reason for the Commission to remove this restriction.

The Commission included this very restriction in the protective orders it issued for the MCI/WorldCom merger and the SBC/Ameritech merger. In the MCI/WorldCom proceeding, the Commission found that this restriction “appropriately balances the potential competitive harms that WorldCom and MCI allege could ensue if sensitive information regarding its future business plans were disclosed to its competitors, and the need for parties to have access to the information provided to the Commission in this proceeding.” *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, Order Adopting Protective Order, 13 FCC Rcd 11166 at ¶ 5 (1998) (“*MCI/WorldCom Protective Order*”); *see also Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corp. to SBC Communications, Inc.*, CC Docket No. 98-141, Order Adopting Protective Order, Attachment A ¶ 3 (rel. Oct. 2, 1998) (“*SBC/Ameritech Protective Order*”). This same balance is appropriate here because exactly the same kinds of competitive harms could result if sensitive information regarding Bell Atlantic’s and GTE’s future business plans were disclosed to their competitors.

Moreover, the “competitive decision-making” standard adopted by the Commission is precisely the same standard adopted by the federal courts in determining whether to permit in-house counsel access to confidential information. In *U.S. Steel Corp. v. U.S.*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), the court described “competitive decisionmaking” as “shorthand for a counsel’s activities, association, and relationship with a client that are such as to involve counsel’s advice and participation in any or all of the

client's decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor." *See also Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992). This same language is therefore incorporated verbatim into the Commission's protective orders for the MCI/WorldCom and SBC/Ameritech mergers and should be included in the protective order for this proceeding.

US Cellular asks the Commission to eliminate the provisions that limit the use of confidential information to this merger proceeding before the Commission. US Cellular wants to use confidential information it obtains in this proceeding "to enforce partnership rights" in any other state or federal court proceeding. US Cellular Comments at 3. The Commission should not grant US Cellular's request.

What US Cellular wants to do with the confidential information it obtains in this proceeding would violate the Commission's discovery rules. Section 1.731(b) provides that "[m]aterials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case" 47 C.F.R. § 1.731(b). Similarly, section 1.731(c) provides that "[t]hese individuals . . . shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission." 47 C.F.R. § 1.731(c). The Commission has consistently incorporated the substance of these rules into its protective orders in merger proceedings. *See, e.g., AT&T and Craig O. McCaw Applications for Consent to Transfer of Control of Radio Licenses*, 9 FCC Rcd 2613 (1994); *Application of Bell Atlantic and NYNEX for Consent to Transfer Control*, Modified Protective Order, File No. NSD-L-96-10, (Dec. 4,

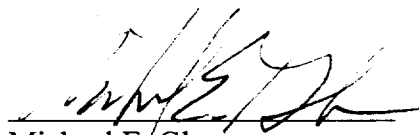
1996); *MCI/WorldCom Protective Order*, Exhibit A ¶¶ 8, 11; *SBC/Ameritech Protective Order*, Exhibit A ¶¶ 8, 11.

Using the confidential information obtained in a Commission proceeding to enforce contract rights in a separate court proceeding would clearly violate the Commission's rules and its prior protective orders. There is therefore no reason to revise the proposed protective order for this proceeding as US Cellular suggests.

CONCLUSION

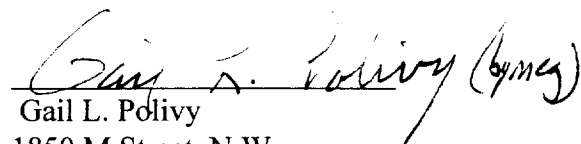
For the foregoing reasons, the Commission should adopt the proposed protective order filed by Bell Atlantic and GTE without any modifications.

Respectfully submitted,



Michael E. Glover
James G. Pachulski
Bell Atlantic Corporation
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-2804

Attorneys for Bell Atlantic



Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

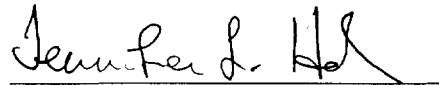
Ward W. Wueste, Jr.
John F. Raposa
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

Attorneys for GTE

Dated: October 22, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 1998, a copy of the foregoing
“Bell Atlantic and GTE Opposition to Comments on Proposed Protective Order” was sent by
first class mail, postage prepaid, to the parties on the attached list.



Jennifer L. Hoh

* Via hand delivery.

ITS*
1919 M Street, NW
Washington, DC 20554

Chief, Policy and Program Planning Division*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554
(2 copies)

Chief*
International Bureau
Federal Communications Commission
2000 M Street, NW
Room 800
Washington, DC 20554
(2 copies)

Jeanine Poltronieri*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5002
Washington, DC 20554

Chief*
Commercial Wireless Division
Federal Communications Commission
2100 M Street, NW
Room 7023
Washington, DC 20554

Ms. Cecilia Stephens***
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554
*** (Disk copy and cover letter only)